

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7403

DATE COMPLAINT FILED: June 4, 2018

DATE OF NOTIFICATION: June 6, 2018

DATE OF LAST RESPONSE: July 2, 2018

DATE ACTIVATED: Sept. 20, 2018

EXPIRATION OF SOL:

May 4, 2023 (earliest)

May 11, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT:

Art Halvorson

MUR: 7441

DATE COMPLAINT FILED:

July 12, 2018

DATE OF NOTIFICATION: July 26, 2018

DATE OF LAST RESPONSE:

Sept. 18, 2018

DATE ACTIVATED: Oct. 29, 2018

EXPIRATION OF SOL:

May 4, 2023 (earliest)

May 11, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT:

John H. Eichelberger

RESPONDENTS:

Dr. John Joyce for Congress and Paul
Kilgore¹ in his official capacity as treasurer
Defending Main Street SuperPAC, Inc., and
Sarah Chamberlain in her official capacity
as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30116

52 U.S.C. § 30118

11 C.F.R. § 109.20

11 C.F.R. § 109.21

11 C.F.R. § 109.22

¹ The Complaint identifies Louis Schiazza as the treasurer of Dr. John Joyce for Congress, but the current treasurer is Paul Kilgore. See Dr. John Joyce for Congress Amended Statement of Organization (Aug. 22, 2018).

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaints allege that Defending Main Street SuperPAC, Inc., and Sarah Chamberlain in her official capacity as treasurer ("SuperPAC"), an independent expenditure-only political committee, coordinated communications with Dr. John Joyce for Congress and Paul Kilgore in his official capacity as treasurer ("Joyce Committee"), the principal campaign committee for John Joyce, a candidate for the House of Representatives in Pennsylvania's 13th Congressional District in 2018, through the use of a common vendor in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). For the reasons discussed below, we recommend that the Commission dismiss the allegations that the Respondents violated 52 U.S.C. §§ 30104, 30116, and 30118 and close the files:

II. FACTUAL BACKGROUND

The nearly identical Complaints allege coordinated communications on the basis that the SuperPAC and the Joyce Committee used the same vendor for media purchases. The Complaints list six disbursements that the Joyce Committee made to Red Maverick Media ("Maverick Media") and Maverick Finance² for media purchases between April 2 and April 20, 2018, totaling \$41,497.80.³ The Complaints also identify SuperPAC independent expenditures

² The Complaints describe Maverick Finance as a subsidiary of Red Maverick Media. MUR 7403 Compl. at 1 (June 4, 2018); MUR 7441 Compl. at 1 (July 12, 2018). The Red Maverick Media website indicates that it offers general campaign services—general consulting and political strategy, communications strategy, and television and radio production—while Maverick Finance indicates that it offers fundraising services. See Red Maverick Media at <https://www.redmaverickmedia.com/about.html>; Maverick Finance at <http://www.maverickfin.com/>.

³ MUR 7403 Compl. at 1; MUR 7441 Compl. at 1-2. See also Dr. John Joyce for Congress, 2018 12-Day Pre- Primary Report (May 3, 2018) at 26-27.

1 payable to Maverick Media between May 1 and May 9, 2018, totaling \$124,811 for
2 communications in opposition to Joyce's primary election opponent Art Halvorson.⁴

3 The Complaints allege that because the SuperPAC and the Joyce Committee used the
4 same vendor, "it appears that there is illegal coordination between Dr. John Joyce's campaign
5 and the Defending Main Street SuperPAC."⁵ Further, the Complaints reason that it is likely,
6 given its small size that Maverick Media does not have in place "proper 'firewall' procedures" to
7 prohibit the flow of information between employees or consultants providing services to the
8 Joyce Committee and to the SuperPAC.⁶

9 In response to the Complaints, the Respondents deny the allegations, asserting that the
10 presence of a common vendor does not create a presumption of coordination, and that Maverick
11 Media had in place a compliant written firewall policy.⁷ Included with their responses is a
12 sworn affidavit from Maverick Media's president, Raymond Zaborney, describing a firewall
13 policy adopted on August 10, 2016, and distributed to all employees, officers and directors, as
14 well as to all clients, contractors, and consultants of Maverick Media.⁸ Further, Zaborney avers
15 that all employees and staff must participate in annual policy compliance training presented by

⁴ MUR 7403 Compl. at 2; MUR 7441 Compl. at 2. *See also*, Defending Main Street SuperPAC, 2018 June Monthly Report at 13, 15 (Schedule E, *Itemized Independent Expenditures*). One of the independent expenditures identified in the Complaints, \$22,400 dated May 9, 2018, was in fact in opposition to a different primary opponent of Joyce's, John E. Eichelberger, Jr. *See* MUR 7441 Compl. at 3, Ex. A (SuperPAC mailer titled "John Eichelberger Cost You More! But Raised His Pay"). The SuperPAC states that it inadvertently reported the incorrect federal candidate opposed by this independent expenditure. MUR 7441 SuperPAC Resp. at 2 (Sept. 18, 2018). Accordingly, the SuperPAC amended its 2018 June Monthly report. *Id.* *See* Defending Main Street SuperPAC, Amended 2018 June Monthly Report at 15 (Sept. 17, 2018).

⁵ MUR 7403 Compl. at 2. *See also* MUR 7441 Compl. at 3.

⁶ MUR 7441 Compl. at 3. *See also* MUR 7403 Compl. at 2.

⁷ MUR 7403 Joyce Committee Resp. at 1 (June 28, 2018). The Committee did not submit a response to the Complaint in MUR 7441. *See also* MUR 7441 SuperPAC Resp. at 1-2.

⁸ MUR 7403 SuperPAC Resp. Attach. 1, Zaborney Aff. ¶¶ 3, 5; MUR 7441 SuperPAC Resp.

1 counsel, and that the most recent training session took place on April 17, 2018.⁹ Zaborney adds
2 that separate staff was assigned to the Joyce Committee and to the SuperPAC, and that Maverick
3 Media's IT consultant created two separate server pathways that could only be accessed by
4 members of each team, and that all art files, data files, and invoicing information for each client
5 were kept on these separate server areas.¹⁰ Finally, Zaborney avers that Maverick Media
6 adhered to the firewall policy at all times, and that no information about the campaign plans,
7 projects, or activities of the Joyce Committee, or any information previously used by Maverick
8 Media in serving the Joyce Committee, was shared with the SuperPAC or any employee or
9 contractor assigned to the SuperPAC.¹¹ Respondents did not include a copy of the firewall
10 policy with their responses.

11 The SuperPAC also includes a sworn affidavit from its treasurer, Sarah Chamberlain, in
12 which she states that she was responsible for making independent expenditures "in connection
13 with the PA-13th Republican Primary" and that neither she, nor anyone else responsible for
14 SuperPAC spending "acted based on any request, suggestion, or consent coming from any
15 representative or agent of the campaign of Dr. John Joyce."¹²

⁹ *Id.* ¶ 5.

¹⁰ *Id.* ¶ 7.

¹¹ *Id.* ¶ 9.

¹² MUR 7403 SuperPAC Resp. at 2, Attach. 2; MUR 7441 SuperPAC Resp. at 2, Attach. 2.

1 **III. LEGAL ANALYSIS**

2 Under the Act, "coordinated" means made in cooperation, consultation, or concert with,
3 or at the request or suggestion of, a candidate or a candidate's authorized committee.¹³ The
4 Commission's regulations provide a three-part test for determining when a communication is a
5 coordinated expenditure, which is treated as an in-kind contribution.¹⁴ The communication
6 must: (1) be paid for by a third party; (2) satisfy one of five "content" standards listed in
7 11 C.F.R. § 109.21(c); and (3) satisfy one of six "conduct" standards listed in 11 C.F.R.
8 § 109.21(d).¹⁵ All three prongs must be satisfied for a communication to be considered
9 coordinated.¹⁶ Political committees are required to report all contributions made and received.¹⁷

10 Any person who is otherwise prohibited from making contributions or expenditures under
11 any part of the Act or Commission regulations is prohibited from paying for a coordinated
12 communication.¹⁸ Independent expenditure-only political committees are prohibited from
13 making contributions to candidates and their authorized committees.¹⁹

13 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

14 11 C.F.R. § 109.21(a)-(b).

15 *Id.*

16 *Id.*; *see also* Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

17 52 U.S.C. § 30104(a), (b).

18 11 C.F.R. § 109.22.

19 *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3. The SuperPAC raised \$5,014,441 during the 2017-2018 election cycle, some of which was from corporations. *See, e.g.*, Defending Main Street SuperPAC, 2018 Sept. Monthly Report at 8 (\$25,000 contribution from JB Hunt Co.).

1 Here, Respondents do not dispute that the communications satisfy the payment and content
2 prongs. SuperPAC paid for independent expenditures totaling \$124,811 made to Maverick
3 Media public communications that opposed Dr. Joyce's primary election opponents, and
4 therefore contained express advocacy.²⁰

5 Even though the payment and content prongs are satisfied, there is no information to
6 support a reasonable inference that the conduct prong is met. The Respondents in these matters
7 funded communications with the same commercial vendor. Under the Commission's
8 regulations, the "common vendor" conduct standard is satisfied if all of the following are true:
9 (1) the person paying for the communication employs a commercial vendor²¹ to "create,
10 produce, or distribute" the communication; (2) that vendor, including any owner, officer, or
11 employee, has provided certain delineated services to the candidate referred to in the
12 communication (or that candidate's opponent) during the 120 days preceding the
13 communication;²² and (3) the vendor uses or conveys to the payor non-public information about
14 the campaign's "plans, projects, activities, or needs," or uses or conveys to the payor non-public
15 information previously used in providing services to the candidate, and that information is

²⁰ See 52 U.S.C. § 30101(17) (definition of "independent expenditure"); 11 C.F.R. § 100.22 (definition of "expressly advocating"); 11 C.F.R. § 109.21(c)(3) (express advocacy content standard, incorporating the definition of "public communication" at 11 C.F.R. § 100.26); Factual & Legal Analysis at 13, MUR 6888 (Republican National Committee).

²¹ "Commercial vendor" means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services. 11 C.F.R. § 116.1(c).

²² The relevant services are: (A) development of media strategy, including the selection or purchasing of advertising slots; (B) selection of audiences; (C) polling; (D) fundraising; (E) developing the content of a public communication; (F) producing a public communication; (G) identifying voters or developing voter lists, mailing lists, or donor lists; (H) selecting personnel, contractors or subcontractors; or (I) consulting or otherwise providing political or media advice. *Id.* § 109.21(d)(4)(ii).

1 material to the creation, production, or distribution of the communication.²³ Under a “safe
2 harbor” provision, the common vendor conduct standard is not met if a commercial vendor has
3 established and implemented a written firewall policy that meets certain requirements, so long as
4 material information is not shared.²⁴

5 The available information does not appear to support the allegation that the SuperPAC
6 coordinated activities with the Joyce Committee via a common vendor. Although both the
7 SuperPAC and the Joyce Committee utilized the services of Maverick Media, the conduct prong
8 of the Commission’s coordination regulations does not appear to be met because there is no
9 information to indicate that the vendor conveyed non-public information regarding the Joyce
10 Committee’s plans, projects, activities, or needs.

11 Further, although Respondents do not provide a copy of Maverick Media’s firewall
12 policy, the Joyce Committee and the SuperPAC assert that it meets the safe harbor requirements
13 of 11 C.F.R. § 109.21(h).²⁵ Respondents provided sworn affidavits from Maverick Media
14 detailing its efforts to prevent the flow of information between the Joyce Committee and the

²³ *Id.* § 109.21(d)(4)(i)-(iii).

²⁴ *Id.* § 109.21(h). A firewall policy satisfies this safe harbor if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

²⁵ *Id.* See also MUR 7403 Joyce Committee Resp. at 2; MUR 7403 SuperPAC Resp. at 2; MUR 7441 SuperPAC Resp. at 2.

1 SuperPAC, as well as between the Maverick Media employees working with each entity.²⁶
2 Although we lack the actual policy, based on the affidavits and other information in the record,
3 Maverck Media appears to have availed itself of the Commission's safe harbor provisions, and
4 the available information fails to give rise to a reasonable inference that Maverick Media did not
5 adhere to the requirements of its policy.²⁷ Therefore, we recommend that the Commission
6 dismiss the allegation that the SuperPAC made or the Joyce Committee accepted an excessive or
7 prohibited unreported contribution via coordinated communications through a common vendor.

8 **IV. RECOMMENDATIONS**

- 9 1. Dismiss the allegation that Dr. John Joyce for Congress and Paul Kilgore in his
10 official capacity as treasurer and Defending Main Street SuperPAC, Inc., and Sarah
11 Chamberlain in her official capacity as treasurer violated 52 U.S.C. §§ 30104, 30116,
12 and 30118;
13
14 2. Approve the attached Factual and Legal Analysis;
15
16 3. Approve the appropriate letters; and

²⁶ See MUR 7403 Joyce Committee Resp. Attach. 1; MUR 7403 SuperPAC Resp. Attach. 1; MUR 7441 SuperPAC Resp. Attach. 1.

²⁷ See MUR 6916 (Democratic National Committee, *et al.*) Factual and Legal Analysis at 16, n.66 (even if Respondents were to satisfy all three factors of the "common vendor" standard, the firewall safe harbor, at 11 C.F.R. § 109.21(h) applies if a vendor has established and implemented a written firewall policy that is designed to prohibit flow of information); MUR 6120 (Darren White for Congress, *et al.*) Factual and Legal Analysis at 6 (Commission found no reason to believe regarding coordination allegations where the media vendor had in place a firewall to prevent the sharing of information between agents for the committees at issue).

4. Close the files.

Lisa J. Stevenson
Acting General Counsel

March 4, 2019

Date

Charles Kitcher

Charles Kitcher
Acting Associate General Counsel for Enforcement

Mark Allen

Mark Allen
Assistant General Counsel

Wanda D. Brown

Wanda D. Brown
Attorney

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Dr. John Joyce for Congress and **MURs:** 7403 and 7441
Paul Kilgore¹ in his official capacity
as treasurer
Defending Main Street SuperPAC, Inc., and
Sarah Chamberlain in her official capacity
as treasurer

I. INTRODUCTION

This matter was generated by Complaints filed with the Federal Election Commission (the "Commission") by Art Halvorson and John H. Eichelberger.² The Complaints in these matters allege violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Defending Main Street SuperPAC, Inc., and Sarah Chamberlain in her official capacity as treasurer ("SuperPAC"), an independent expenditure-only political committee, and Dr. John Joyce for Congress and Paul Kilgore in his official capacity as treasurer ("Joyce Committee"), the principal campaign committee for John Joyce, a candidate for the House of Representatives in Pennsylvania's 13th Congressional District in 2018. Specifically, the Complaints allege that SuperPAC and the Joyce Committee coordinated communications through the use of a common vendor, in violation of the Act.

Based on available information, the Commission dismisses the allegations that the Respondents violated 52 U.S.C. §§ 30104, 30116, and 30118 and closes the file.

¹ The Complaint identifies Louis Schiazza as the treasurer of Dr. John Joyce for Congress, but the current treasurer is Paul Kilgore. See Dr. John Joyce for Congress Amended Statement of Organization (Aug. 22, 2018).

² See 52 U.S.C. § 30109(a)(1).

II. FACTUAL BACKGROUND

The nearly identical Complaints allege coordinated communications on the basis that the SuperPAC and the Joyce Committee used the same vendor for media purchases. The Complaints list six disbursements that the Joyce Committee made to Red Maverick Media (“Maverick Media”) and Maverick Finance³ for media purchases between April 2 and April 20, 2018, totaling \$41,497.80.⁴ The Complaints also identify disbursements reported by the SuperPAC to Maverick Media between May 1 and May 9, 2018, for independent expenditures, totaling \$124,811, in opposition to Joyce’s primary election opponent Art Halvorson.⁵ The Complaints allege that because the SuperPAC and the Joyce Committee used the same vendor, “it appears that there is illegal coordination between Dr. John Joyce’s campaign and the Defending Main Street SuperPAC.”⁶ Further, the Complaints allege that it is likely, given its small size that Maverick Media does not have in place “proper ‘firewall’ procedures” to

³ The Complaints describe Maverick Finance as a subsidiary of Red Maverick Media. MUR 7403 Compl. at 1 (June 4, 2018); MUR 7441 Compl. at 1 (July 12, 2018). The Red Maverick Media website indicates that it offers general campaign services—general consulting and political strategy, communications strategy, and television and radio production—while Maverick Finance indicates that it offers fundraising services. See Red Maverick Media at <https://www.redmaverickmedia.com/about.html>; Maverick Finance at <http://www.maverickfin.com/>.

⁴ MUR 7403 Compl. at 1; MUR 7441 Compl. at 1-2. See also Dr. John Joyce for Congress, 2018 12-Day Pre- Primary Report (May 3, 2018) at 26-27.

⁵ MUR 7403 Compl. at 2; MUR 7441 Compl. at 2. See also, Defending Main Street SuperPAC, 2018 June Monthly Report at 13, 15 (Schedule E, *Itemized Independent Expenditures*). One of the independent expenditures identified in the Complaints, \$22,400 dated May 9, 2018, was in fact in opposition to a different primary opponent of Joyce’s, John E. Eichelberger, Jr. See MUR 7441 Compl. at 3, Ex. A (SuperPAC mailer titled “John Eichelberger Cost You More! But Raised His Pay”). The SuperPAC states that it inadvertently reported the incorrect federal candidate opposed by this independent expenditure. MUR 7441 SuperPAC Resp. at 2 (Sept. 18, 2018). Accordingly, the SuperPAC amended its 2018 June Monthly report. *Id.* See Defending Main Street SuperPAC, Amended 2018 June Monthly Report at 15 (Sept. 17, 2018).

⁶ MUR 7403 Compl. at 2. See also MUR 7441 Compl. at 3.

1 prohibit the flow of information between employees or consultants providing services to the
2 Joyce Committee and to the SuperPAC.⁷

3 In response to the Complaints, the Respondents deny the allegations, asserting that the
4 presence of a common vendor does not create a presumption of coordination, and that Maverick
5 Media had in place a compliant written firewall policy.⁸ Included with their responses is a sworn
6 affidavit from Maverick Media's president, Raymond Zaborney, describing a firewall policy
7 adopted on August 10, 2016, and distributed to all employees, officers and directors, as well as to
8 all clients, contractors, and consultants of Maverick Media.⁹ Further, Zaborney avers that all
9 employees and staff must participate in annual policy compliance training presented by counsel,
10 and that the most recent training session took place on April 17, 2018.¹⁰ Zaborney adds that
11 separate staff was assigned to the Joyce Committee and to the SuperPAC, and that Maverick
12 Media's IT consultant created two separate server pathways that could only be accessed by
13 members of each team, and that all art files, data files, and invoicing information for each client
14 were kept on these separate server areas.¹¹ Finally, Zaborney avers that Maverick Media
15 adhered to the firewall policy at all times, and that no information about the campaign plans,
16 projects, or activities of the Joyce Committee, or any information previously used by Maverick
17 Media in serving the Joyce Committee, was shared with the SuperPAC or any employee or

⁷ MUR 7441 Compl. at 3. *See also* MUR 7403 Compl. at 2.

⁸ MUR 7403 Joyce Committee Resp. at 1 (June 28, 2018). The Committee did not submit a response to the Complaint in MUR 7441. *See also* MUR 7441 SuperPAC Resp. at 1-2.

⁹ MUR 7403 SuperPAC Resp. Attach. 1, Zaborney Aff. ¶¶ 3, 5; MUR 7441 SuperPAC Resp.

¹⁰ *Id.* ¶ 5.

¹¹ *Id.* ¶ 7.

1 contractor assigned to the SuperPAC.¹² Respondents did not include a copy of the firewall
2 policy with their responses.

3 The SuperPAC also includes a sworn affidavit from its treasurer, Sarah Chamberlain, in
4 which she states that she was responsible for making independent expenditures “in connection
5 with the PA-13th Republican Primary” and that neither she, nor anyone else responsible for
6 SuperPAC spending “acted based on any request, suggestion, or consent coming from any
7 representative or agent of the campaign of Dr. John Joyce.”¹³

8 III. LEGAL ANALYSIS

9 Under the Act, “coordinated” means made in cooperation, consultation, or concert with,
10 or at the request or suggestion of, a candidate or a candidate’s authorized committee.¹⁴ The
11 Commission’s regulations provide a three-part test for determining when a communication is a
12 coordinated expenditure, which is treated as an in-kind contribution.¹⁵ The communication
13 must: (1) be paid for by a third party; (2) satisfy one of five “content” standards listed in
14 11 C.F.R. § 109.21(c); and (3) satisfy one of six “conduct” standards listed in 11 C.F.R.
15 § 109.21(d).¹⁶ All three prongs must be satisfied for a communication to be considered

¹² *Id.* ¶ 9.

¹³ MUR 7403 SuperPAC Resp. at 2, Attach. 2; MUR 7441 SuperPAC Resp. at 2, Attach. 2.

¹⁴ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

¹⁵ 11 C.F.R. § 109.21(a)-(b).

¹⁶ *Id.*

1 coordinated under these regulations.¹⁷ Political committees are required to report all
2 contributions made and received.¹⁸

3 Any person who is otherwise prohibited from making contributions or expenditures under
4 any part of the Act or Commission regulations is prohibited from paying for a coordinated
5 communication.¹⁹ Independent expenditure-only political committees are prohibited from
6 making contributions to candidates and their authorized committees.²⁰

7 Here, Respondents do not dispute that the communications satisfy the payment and
8 content prongs. The SuperPAC made disbursements to Maverick Media for public
9 communications totaling \$124,811 that were reported by the SuperPAC as independent
10 expenditures that opposed Dr. Joyce's primary election opponents.

11 Even though the payment and content prongs appear satisfied, there is no information
12 indicating that the conduct prong is met. The Respondents in these matters funded
13 communications with the same commercial vendor. Under the Commission's regulations, the
14 "common vendor" conduct standard is satisfied if all of the following are true: (1) the person
15 paying for the communication employs a commercial vendor²¹ to "create, produce, or distribute"
16 the communication; (2) that vendor, including any owner, officer, or employee, has provided

¹⁷ *Id.*; see also Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

¹⁸ 52 U.S.C. § 30104(a), (b).

¹⁹ 11 C.F.R. § 109.22.

²⁰ See 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3. The SuperPAC raised \$5,014,441 during the 2017-2018 election cycle, some of which was from corporations. See, e.g., Defending Main Street SuperPAC, 2018 Sept. Monthly Report at 8 (\$25,000 contribution from JB Hunt Co.).

²¹ "Commercial vendor" means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services. 11 C.F.R. § 116.1(c).

1 certain delineated services to the candidate referred to in the communication (or that candidate's
2 opponent) during the 120 days preceding the communication;²² and (3) the vendor uses or
3 conveys to the payor non-public information about the campaign's "plans, projects, activities, or
4 needs," or uses or conveys to the payor non-public information previously used in providing
5 services to the candidate, and that information is material to the creation, production, or
6 distribution of the communication.²³ Under a "safe harbor" provision, the common vendor
7 conduct standard is not met if a commercial vendor has established and implemented a written
8 firewall policy that meets certain requirements, so long as material information is not shared.²⁴

9 The available information does not appear to support the allegation that the SuperPAC
10 coordinated activities with the Joyce Committee via a common vendor. Although both the
11 SuperPAC and the Joyce Committee utilized the services of Maverick Media, the conduct prong
12 of the Commission's coordination regulations does not appear to be met because there is no
13 information to indicate that the vendor conveyed non-public information regarding the Joyce
14 Committee's plans, projects, activities, or needs.

²² The relevant services are: (A) development of media strategy, including the selection or purchasing of advertising slots; (B) selection of audiences; (C) polling; (D) fundraising; (E) developing the content of a public communication; (F) producing a public communication; (G) identifying voters or developing voter lists, mailing lists, or donor lists; (H) selecting personnel, contractors or subcontractors; or (I) consulting or otherwise providing political or media advice. *Id.* § 109.21(d)(4)(ii).

²³ *Id.* § 109.21(d)(4)(i)-(iii).

²⁴ *Id.* § 109.21(h). A firewall policy satisfies this safe harbor if it (1) is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or that candidate's authorized committee, the candidate's opponent, the opponent's authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate's campaign plans, projects, activities or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

1 Further, although Respondents do not provide a copy of Maverick Media's firewall
2 policy, the Joyce Committee and the SuperPAC assert that it meets the safe harbor requirements
3 of 11 C.F.R. § 109.21(h).²⁵ Respondents provided sworn affidavits from Maverick Media
4 detailing its efforts to prevent the flow of information between the Joyce Committee and the
5 SuperPAC, as well as between the Maverick Media employees working with each entity.²⁶
6 Although we lack the actual policy, based on the affidavits and other information in the record,
7 Maverick Media appears to have availed itself of the Commission's safe harbor provisions.²⁷

8 Therefore, the Commission dismisses the allegation that the SuperPAC made or the Joyce
9 Committee accepted an excessive or prohibited unreported contribution via coordinated
10 communications through a common vendor and closes the files.

²⁵ *Id.* See also MUR 7403 Joyce Committee Resp. at 2; MUR 7403 SuperPAC Resp. at 2; MUR 7441 SuperPAC Resp. at 2.

²⁶ See MUR 7403 Joyce Committee Resp. Attach. 1; MUR 7403 SuperPAC Resp. Attach. 1; MUR 7441 SuperPAC Resp. Attach. 1.

²⁷ See MUR 6916 (Democratic National Committee, *et al.*) Factual and Legal Analysis at 16, n.66 (even if Respondents were to satisfy all three factors of the "common vendor" standard, the firewall safe harbor, at 11 C.F.R. § 109.21(h) applies if a vendor has established and implemented a written firewall policy that is designed to prohibit flow of information); MUR 6120 (Darren White for Congress, *et al.*) Factual and Legal Analysis at 6 (Commission found no reason to believe regarding coordination allegations where the media vendor had in place a firewall to prevent the sharing of information between agents for the committees at issue).